

FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 173235

PRELIMINARY RECITALS

Pursuant to a petition filed on March 29, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services regarding Medical Assistance, a hearing was held on July 21, 2016, by telephone.

The issue for determination is whether Petitioner was overissued BadgerCare+ benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.

2. Petitioner was sent a BadgerCare+ overpayment notice dated February 19, 2016 that informed Petitioner that she had been overissued BadgerCare+ benefits in the amount of \$607.48 for the period of May 1, 2015 through December 31, 2015. Petitioner timely appealed.
3. The reason for the overissuance alleged here is that Petitioner did not correctly report her household composition; specifically, that her ex-husband (████) was in the home. They married in 2009 but divorced in 2010. █████ was incarcerated on occasions in 2011, 2012 and 2013 but when released lived with Petitioner. This was not reported to the agency though an August 19, 2014 notice does note that █████ was not included in the household as he was incarcerated at the time but that changes in household composition has to be reported within 10 days. Petitioner and █████ do have children in common. Their youngest was born on September 1, 2015 per CARES demographic records.
4. The overpayment alleged here consists of premiums for Petitioner's and █████'s child that would have been owed had income been correctly reported as well as some Medicaid payments for Petitioner's child or children for the month of August 2015.
5. █████ was incarcerated for a total of 11 days in 4 different instances during the time relevant here.

DISCUSSION

The Department may recover any overpayment of medical assistance that occurs because of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665 [BadgerCare].
 2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
 3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.
- Wis. Stat. § 49.497(1).*

Petitioner was notified that that █████ was not in the household but a change in composition had to be reported. Further, where it is children's eligibility and benefits that are the subject of a BadgerCare+ eligibility and premium claim, the household has to include parents and their income. *See, BadgerCare+ Eligibility Handbook, §§2.3.2.1 and 2.3.2.2.*

The only issue here is where █████ was living during the period of the overpayment alleged here. The amount of income was not raised as an issue.

Petitioner testified that █████ did not live with her and there was, therefore, no need to report his presence or income. She points to probation and parole agent visit with █████ which were at the home of █████'s mother. She also notes that she and █████ had a rather contentious relationship, that █████ is abusive and controlling and that she had a restraining order preventing him from contact with her. Her mother testified that she was at the house often and did not see that █████ was there.

Petitioner's testimony was contradicted by █████, his mother and the findings of an investigator. The investigator testified that █████ told him that he was living with Petitioner when not incarcerated. █████ testified that he was with Petitioner when not incarcerated until about July 2015. At that point he left as he

believed Petitioner was in contact with an ex-boyfriend. He testified that he did come back for about a month in September 2015 after the birth of the daughter of Petitioner and [REDACTED] but that it did not work and he again left. He also stated that he reported his mother's address to the probation agent because of the restraining order and would have visits there. This matched statements [REDACTED] made to the investigator. [REDACTED]'s mother testified that [REDACTED] did not live with her but with Petitioner. She and [REDACTED] admit that they colluded to mislead the probation agent. Finally, the [REDACTED] investigator also obtained statements from neighbors who stated that [REDACTED] lived with Petitioner but would not provide their names as they apparently indicated fear of Petitioner – I have not given those any weight here though I do note that when they were interviewed in December 2015 they did tell the investigator that they had not seen [REDACTED] much for several weeks which does lend some support to his statement that he left for good about a month after the baby was born.

Petitioner's daughter testified for Petitioner but did not completely contradict the testimony of [REDACTED]. She stated that [REDACTED] would come to the house at random times for up to a couple of weeks at a time.

I am upholding the overpayment for the period of May 1, 2015 through September 30, 2015. Though the relationship between Petitioner and [REDACTED] was undoubted tumultuous, he was with Petitioner during this period except when they were fighting and when he had to 'pretend' to live with his mother for the probation visits. [REDACTED] and Petitioner had a child born on September 1, 2015. [REDACTED] and his mother both admit they lied to a state probation agent. This is a statement against self-interest. [REDACTED] has joint liability and again his admissions here are against his self-interest. Petitioner's daughter's testimony does not really contradict [REDACTED]'s testimony. Conversely, Petitioner's own testimony is so self-interested that I did not find her credible. If you are receiving the taxpayer funded public BadgerCare+ benefit you have an obligation to report household composite and income accurately.

As I found [REDACTED] to be the most credible witness I am, however, reversing the overpayment for the period from October 1, 2015 forward. I believed him in that he and Petitioner tried to reconcile for a month after the birth of their youngest but it did not work. As the youngest was born on September 1, 2015 this puts him out of Petitioner's home as of October 1, 2015. This has the effect of eliminating a \$115.00 overpayment in October 2015 and a \$50.00 overpayment in December 2015, thereby reducing the overall BadgerCare+ overpayment at issue here to \$442.48.

CONCLUSIONS OF LAW

That the agency has presented evidence sufficient to demonstrate that Petitioner was overpaid BadgerCare+ benefits in the amount of \$442.48.

THEREFORE, it is

ORDERED

That this appeal is remanded to the agency with instructions to reduce the BadgerCare+ overpayment at issue here to \$442.48 by rescinding the overpayment for the months of October and December 2015.

In all other respects, this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

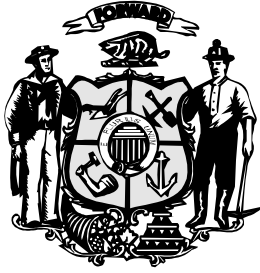
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of August, 2016

\s _____
David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 18, 2016.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability

